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November 21, 2017

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing of the American Cable Association on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903), AU Docket No. 17-182, WC Docket No. 10-90

Dear Ms. Dortch:

On November 17, 2017, Ross Lieberman (American Cable Association (“ACA”)) and Thomas Cohen (Kelley Drye & Warren LLP, Counsel to ACA) met with the following staff of the Rural Broadband Auctions Task Force to discuss the *Public Notice*¹ on procedures and requirements for the Connect America Fund Phase II auction: Chelsea Fallon, Alexander Minard, Thom Parisi, Martha Stancill, Heidi Lankau, Katie King, and (by phone) Mark Montano. The purpose of the meeting was to build on comments filed by ACA in response to the *Public Notice*² and reflect recent discussions ACA has had with its members who are considering whether and how to participate in the auction. ACA’s members indicated the following:

¹ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 6238 (2017) (“*Public Notice*”).

² Comments of the American Cable Association in Response to the Public Notice, AU Docket No. 17-182, WC Docket No. 10-90 (Sept. 18, 2017); Reply Comments of the American Cable Association in Response to the Public Notice, AU Docket No. 17-182, WC Docket No. 10-90 (Oct. 18, 2017).

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1. To maximize the number of economically viable lots in the auction, which would thereby maximize participation, the minimum geographic unit of bidding for Auction 903 should be a census block.

The Commission has proposed that census block groups be the minimum geographic area for bidding.³ However, based on ACA members' diligence to date, they have determined that, although many census blocks may be economically viable, the census block groups – in which these blocks are found – often are not. This is because these groups include extremely high-cost census blocks, whose reserve price is capped at an amount often far below what a bidder would need to meet its deployment obligations.⁴ That is, because of the inclusion of a large number of extremely high-cost census blocks in the auction, the total amount of support available for all eligible census blocks in a census block group too often is insufficient for an economically viable build, particularly for non-incumbent providers operating in nearby areas seeking to provide broadband service at the two highest tiers.⁵ ACA members suggest this problem can be addressed by using a census block as the minimum geographic area for bidding. In addition, should the Commission adopt this proposed approach, because of the smaller size of census blocks, ACA members believe in this case there would be value in enabling them to package census blocks⁶ into a single bid within a limited area to achieve potential network economies and spread the fixed costs of participation in the program. By deeming census blocks as the minimum geographic unit of bidding, the Commission is more likely to ensure that attractive eligible census blocks are served most efficiently, and to maximize overall participation in the auction.

2. The Commission should continue to ensure that Connect America Fund support should only be used to deploy facilities and provide service in eligible areas.

In establishing the Connect America Fund in 2011, the Commission adopted the fundamental principle that government funds should only be used to support service in eligible

³ *Public Notice*, 32 FCC Rcd at 6241-42, paras. 12-14.

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5979, para. 90 (2016).

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1648, para. 63 (2017).

⁶ ACA agrees with the Commission that the inclusion of extremely high-cost blocks in the auction “will enable parties to build integrated networks that span both types of areas in adjacent census blocks as appropriate,” however, ACA believes this outcome is best achieved through its packaged bidding proposal rather than by using a census block group as the minimum lot size. *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order *et al.*, 29 FCC Rcd 7051, 7060, para. 30 (2014).

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areas and not by providers to compete with unsubsidized providers in their operating areas.⁷ In this order, the Commission required ETCs, either through the States or directly with the FCC, to certify that “all federal high-cost support provided to such carrier was used...and will be used...only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁸ This requirement prevents federally subsidized providers from harming providers that rely on private funding to deploy networks and offer service, and it gives these unsubsidized providers the incentive to upgrade and expand their networks. It also makes efficient use of scarce government resources by targeting them to areas where service would not be otherwise provided. The Commission has since strictly enforced this principle, for instance, in denying price cap carrier requests to use Phase I support for second-mile fiber support and to upgrade service to “underserved” locations even though such locations share network facilities with “unserved” locations.⁹

Recipients of Phase II auction support too will be required to make the § 54.314 certification. ACA urges the Commission to take the additional step of requiring all recipients of support to certify in their long-form application that they will not use facilities constructed to provide voice and broadband service using Phase II support in eligible areas to provide any service in ineligible areas.¹⁰ This would further ensure that scarce universal service support is only used to construct networks that provide service in eligible areas – and not to provide service in served areas.

⁷ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17859, para. 607 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁸ *Id.* at 17860-61, paras. 608-613. 47 CFR § 54.314.

⁹ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4655, paras. 21-22 (2012). *See also Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5973, para. 70 (2016) (“2016 CAF Order”) (“[W]e conclude on balance that to allow such entities [competitive bidders] to overbuild census blocks already served with broadband speeds of 10/1 Mbps would be an inefficient use of our finite budget.”).

¹⁰ The Commission can examine this certification in tandem with its review of the technology and system design (the professional engineer’s certification). *See 2016 CAF Order*, 31 FCC Rcd at 5987-88, para. 114.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.¹¹

Sincerely,



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¹¹ 47 C.F.R. § 1.1206.